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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,431	01/22/2001	Charles L. Jones	US20000181	9566

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WHIRLPOOL PATENTS COMPANY - MD 0750
500 RENAISSANCE DRIVE - SUITE 102
ST. JOSEPH, MI 49085

EXAMINER

VIG, NARESH

ART UNIT	PAPER NUMBER
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3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/767,431	Applicant(s) JONES, CHARLES L.	
	Examiner Naresh Vig	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in reference to response received 13 April 2007. Claims 1 – 19 are pending for examination.

Response to Arguments

Applicant's arguments and concerns are for amended claims which have been responded to in response to pending amended claims.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 18 are process claims which are directed to a process being used to make a product comprising a number of steps. Neither the preamble nor the steps recite use of machine to perform those steps. Hence it would be logical to assume that the steps could be performed by either a machine or human. The examiner does the following analysis to examine if claim 1 satisfies 35 USC 101.

Not every "process" in the dictionary sense is a "process" under § 101. The Supreme Court has defined a "process" as involving a transformation of subject

matter to a different state or thing, id. at 1398-1401, where the transformation of physical subject matter involves technology.

The absence of a machine/computer does not necessarily mean that a method is directed to nonstatutory subject matter. A "process" under § 101 is a series of steps that transforms physical subject matter (tangible or intangible) to a different state or thing, id. at 1398-99, and is not limited to the means disclosed for performing it, id. at 1400-01, and is not required to be performed by a machine. For example, a step of "mixing" two chemicals to produce a composition of matter recites a transformation of physical matter to a different state regardless of whether it is performed by a machine or a human.

The concurrence/dissent of APJ Barrett in Lundgren concludes that there are three viable tests for statutory subject matter: (i) to constitute a "process" under 35 U.S.C. § 101 requires that the method steps transform physical subject matter (tangible or intangible) to a different state or thing; (2) "laws of nature, natural phenomena, and abstract ideas" are exceptions to § 101 and apply to subject matter that would otherwise be within § 101; and (3) the claimed subject matter must be "reduced to some type of practical application, i.e., 'a useful, concrete and tangible result,'" " State Street, 149 F.3d at 1373, 47 USPQ2d at 1600-01.

Rather than applying the transformation test or the abstract idea exception, the examiner relies on the test that the claimed subject matter must be "reduced to some type of practical application, i.e., 'a useful, concrete and tangible result,'" that is State Street test.

The State Street test requires that the claimed subject matter is "reduced to some type of practical application, i.e., 'a useful, concrete and tangible result.'" The "useful, concrete and tangible result" must be specified in the claims; i.e., it is not sufficient that a claim reads on a practical application disclosed in the specification. A claim which reads on both statutory and nonstatutory subject matter should be considered unpatentable. See Lundgren, 76 USPQ2d at 1417-24. Also, the test requires that the "result" must be "useful" and "concrete" and "tangible." And, the test is for a "useful, concrete and tangible result" and, therefore, it is the final result that must be examined, not just the individual steps.

In the instant case there is/are no product made by the recited claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whirlpool Corporation in view of Abelow US Patent 5,999,908.

Regarding claim 1, Whirlpool teaches a product made by the process by establishing a product personality for a product series [Whirlpool, page 4].

correlating the product personality with a visual characteristic of the product series as viewed by a consumer [Whirlpool, page 4];

Even though Whirlpool does not explicitly teach designing the product based on the correlation. However, Whirlpool implicitly teaches designing the product based on the correlation (Whirlpool teaches designing family of products like matching kitchen appliances) [Whirlpool, page 4]. Abelow teaches concept for correlating the product personality with a visual characteristic of the product series as viewed by a consumer, and designing the product based on the correlation [Abelow, col. 9, lines 18 – 28].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool to use concepts of Abelow to help the manufacturers produce customer directed products.

Regarding claim 2, Whirlpool in view of Abelow teaches capability for establishing at least one personality characteristic of the product series [Whirlpool, page 4].

Regarding claim 3, Whirlpool in view of Abelow teaches capability for assigning at least one adjective to the personality characteristic [Whirlpool, page 4].

Regarding claim 4, Whirlpool in view of Abelow teaches capability for creating a perceptual map (how to embed a new type of product feature within a range of products, helping them evolve into Customer Directed Products by means of Development Interactions) [Abelow, Summary of Invention].

Regarding claim 5, Whirlpool in view of Abelow teaches capability for creating a perceptual map (how to embed a new type of product feature within a range of products, helping them evolve into Customer Directed Products by means of Development Interactions) [Abelow, Summary of Invention].

Regarding claim 6, Whirlpool in view of Abelow teaches capability for creating a map with a plurality of axes that are exclusive and differentiated (e.g. blue print of refrigerator).

Regarding claim 7, Whirlpool in view of Abelow teaches capability for selecting a configuration for at least a component of the product (e.g. handle).

Regarding claim 8, Whirlpool in view of Abelow teaches capability for selecting a texture of at least a component of the product series (stainless finish, painted finish etc.).

Regarding claim 9, Whirlpool in view of Abelow teaches capability for selecting an architecture of at least a component of the product series (stainless steel front, white front etc.).

Regarding claim 10, Whirlpool in view of Abelow teaches capability for selecting a brand identifier of the product series (e.g. KitchenAid, Kirkland Brand appliances manufactured by Whirlpool for Costco, reference provided earlier to the applicant).

Regarding claim 11, Whirlpool in view of Abelow teaches capability for the brand identifier comprises a logo (e.g. KitchenAid Logo).

Regarding claim 12, Whirlpool in view of Abelow teaches capability for establishing at least one personality characteristic of the product.

Regarding claim 13, Whirlpool in view of Abelow teaches capability for assigning at least one adjective to the personal characteristic.

Regarding claim 14, Whirlpool in view of Abelow teaches capability for correlating the product personality with a perceptual map.

Regarding claim 15, Whirlpool in view of Abelow teaches capability for selecting a brand to create a brand identifier.

Regarding claim 16, Whirlpool in view of Abelow teaches capability for correlating the brand identifier with a predetermined appearance of at least a component of the product series.

Regarding claim 17, as responded to earlier in response to claims 1 – 16, Whirlpool teaches creating a product by:

establishing desired brand personalities for a series of products [Whirlpool, page 4];

Whirlpool does not explicitly teach mapping customer perceptions of the brand personalities. However, Whirlpool teaches designing products to meet customer's perception on how they will be using the product (use oven to cook food, refrigerator to store food etc.). Abelow teaches concept for mapping customer perceptions of the brand personalities [Abelow, col. 9, lines 18 – 28].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool to use concepts of Abelow to help the manufacturers produce customer directed products.

Whirlpool in view of Abelow teaches capability for:
correlating visual characteristics of the brand personalities to a desired brand [Whirlpool, page 4];

determining visual characteristics of the desired brand [Whirlpool, page 4]; and

designing a product appearance in response to the visual characteristics of the desired brand [Whirlpool, page 4].

Regarding claim 18, as responded to earlier in response to claims 1 – 17, Whirlpool teaches concept for creating brand equity in a series of products by:

Whirlpool does not explicitly teach assigning desired personality adjectives to a current brand, the brand including a series of products. Abelow teaches concept for assigning desired personality adjectives to a current brand, the brand including a series of products [Abelow, col. 9, lines 18 – 28].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool to use concepts of Abelow to help the manufacturers produce customer directed products.

Whirlpool in view of Abelow teaches capability for:

associating a plurality of images and a plurality of dominant personality traits to generate an association between the plurality of images with the plurality dominant personality traits [Whirlpool, page 4];

correlating the association of the images and traits with the adjectives to generate an image adjective profile [Whirlpool, page 4];

creating a brand visual characteristic by plotting the association on a perceptual map [Whirlpool, page 4]; and

abstracting a design from the plot and the image adjective profile to create a brand visual identifier [Whirlpool, page 4].

Regarding claim 19, Whirlpool teaches series of appliances wherein appliances include refrigerator

Whirlpool does not explicitly teach appliance having an appearance with a visual characteristic correlated to a predetermined product personality. However, Whirlpool teaches appliance having an appearance with a correlated visual characteristic. Abelow teaches concept for appliance having an appearance with a visual characteristic correlated to a predetermined product personality [Abelow, col. 9, lines 18 – 28].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whirlpool to use concepts of Abelow to help the manufacturers produce customer directed products.

Whirlpool in view of Abelow teaches:

a first appliance having an appearance with a visual characteristic correlated to a predetermined product personality; and

a second, different appliance having an appearance with a similar visual characteristic correlated to the product personality, the similar visual characteristic to include color.

Conclusion

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is (571) 272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Naresh Vig
Examiner
Art Unit 3629

June 25, 2007